

Arjun Agarwal has published a detailed response to our earlier article. His fundamental position remains the same that UGC recognition was mandatorily required, while we maintain that such recognition was not required. Although the position will be clear and put to rest when the courts decide the matter, it is important that the statutory position is presented and explained here, especially for the benefit of students of these courses.

Arjun has referred to additional sources to argue his stance that such recognition was mandatory and necessary. We will only refer to such additional sources, and not re-explain our fundamental argument, for which you can refer to our earlier article.

In addition, he has also asked certain questions to iPleaders, which have been addressed later.

#1 - UGC's letters in 2016

Arjun has referred to three UGC letters issued in 2016- 25th January 2016, 6th October, 2016 and December 2016 as the basis of him claiming that NUJS' online courses were illegal from 2012 onwards.

Arjun has argued that there is a general prohibition on all hybrid and online courses, but he has not produced a copy of any such prohibition.

UGC Letter in January 2016

ANNEXURE 11

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UNIVERSITY GRANTS COMMISSION
Bahadur Shah Zafar Marg
New Delhi-110 002

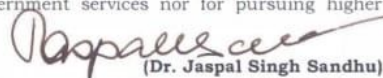
No. F.11-5/2015 (DEB-III)

Dated:-25.01.2016

PUBLIC NOTICE : DISTANCE EDUCATION PROGRAMMES

It has come to the notice of the UGC that some Universities/Deemed to be Universities/Institutions are offering programs through Open & Distance Learning (ODL) mode in gross violation of the policy of the UGC/erstwhile DEC. These Universities/Deemed to be Universities/Institutions are issuing misleading advertisements that their programmes are recognized by the UGC. Students, parents and public in general, are hereby, informed that the list of the recognized institutions (alongwith the courses), which are permitted to offer programmes through distance mode is posted on the UGC's website www.ugc.ac.in/deb. Besides, it may also be noted that no institution is permitted to offer Diploma/ Bachelor/Master level programme in ODL mode in Engineering & Technology. Also, UGC has not accorded recognition to any university/institution to offer 'online' programmes.

As per the Hon'ble Supreme Court judgement (2005) in the case of Prof. Yashpal vs. the State of Chhattisgarh the policy of UGC with regard to territorial jurisdiction and off -campuses/study centres has been clearly articulated in its Public Notice dated June 27, 2013 which is available on UGC website. It may also be noted that qualifications acquired through ODL mode from a non-recognized institution(s) shall neither be recognized for the purpose of employment in government services nor for pursuing higher education.


(Dr. Jaspal Singh Sandhu)
SECRETARY, UGC


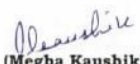

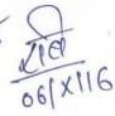

This UGC circular dated 25th January, 2016 (available [here](#)) is referring to universities which have issued misleading advertisements about UGC recognition. It also states that no institution is permitted to offer Diploma/ Bachelor/ Master Level programs in ODL mode in Engineering and Technology. It then states that UGC has not recognized any 'online' courses as of 25th January, 2016.

It does not state that conducting online courses without UGC recognition is an illegal act. It has never been anyone's case that NUJS online courses were recognized by UGC. The entire question is whether taking such recognition is mandatory before offering online courses. As we expected, Arjun failed to provide any legal provision, either section is any Act, Rule or

Regulation, nor even a circular, that states that taking recognition for online courses was a legal obligation of NUJS before UGC passed a regulation to that effect in 2018.

UGC Letter of October 2016

The following UGC circular dated 6th October 2016 was also provided:

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www.ugc.ac.in/deb	 <small>Open Distance Request</small>	UNIVERSITY GRANTS COMMISSION DISTANCE EDUCATION BUREAU 35-FEROZE SHAH ROAD NEW DELHI-110 001
F.No. 12-12/2016 (DEB-III)	Dated: Oct., 2016 06 OCT 2016	
<u>By Speed Post</u>		
The Registrar/Director (As per list)		
Sub: <i>Online Examinations under Open and Distance Learning mode-Reg.</i>		
<p>Sir,</p> <p>As you are aware that while seeking recognition for the years 2015-16 and 2016-17, the institutions submitted an affidavit agreeing to various conditions including that "no online programme leading to award of degree/certification shall be offered by the University/institution until a policy is framed and approved by UGC in this regard".</p> <p>However, it has been noted by UGC that some institutions/universities which have been approved by UGC to impart education through open and distance learning mode are offering to conduct 'Online Examinations'.</p> <p>The matter was considered and it was observed that creditable online examination system for large number of learners involves a lot of complexity of managerial issues, availability of reliable and robust alternative networks connecting all examination centres, highly secured ICT systems; development of difficulty level based huge question banks etc., requiring heavy initial expenditure and running costs. It was also observed that so far, UGC has not laid down any standard parameters for holding the examinations 'Online'.</p> <p>It is therefore, requested that your university/institution should not conduct 'Online Examinations' until such time that the UGC Guidelines are formulated and made mandatory applicable.</p> <p>This issues with the approval of competent authority.</p>		
<p>Yours faithfully</p> <p> (Megha Kaushik) Education Officer</p>		
Copy to:		
The Publication Officer (for uploading on UGC (DEB) website)		
 	<p> (Megha Kaushik) Education Officer</p>	

Arjun quotes the line that “no online programme leading to award of degree/ certification shall be offered by the University/ institution until a policy is framed and approved by UGC in this regard.

It must be noted that this circular was issued to universities which were already recognized for distance courses by the UGC. The circular does not indicate that conducting online exams per se is illegal. The circular does not even apply to any university that had not taken distance education accreditation. It is a direction to only those universities which had taken accreditation from UGC, for the purpose of UGC accredited courses.

In fact, UGC only advised the universities which were already recognized by it for distance courses to not conduct online examinations until new guidelines were formulated and made mandatory. Notably, NUJS’ name is not specified in the circular. Since the UGC had not accorded recognition to the university, the requirements would not apply to NUJS in the first place. Hence, applying the requirements of the circular to NUJS’s online courses, is incorrect.

The full text of the circular is available here (list of recipient universities is also mentioned at the end).

The incorrect and desperate attempt to find laws that do not apply to NUJS online courses only highlight the precarious legal position of those who wish to argue that NUJS offered illegal online courses.

For NUJS’s online courses to be illegal, there would have to be substantive law in the first place saying that offering such courses without UGC recognition will be illegal. Such illegality cannot be derived from some tangential circulars.

UGC Letter of December 2016

With respect to the [UGC Letter of December 2016](#), Arjun has quoted the following excerpt:

“It has been decided that IGNOU, New Delhi and State Open Universities (SOUs), which has got approval from UGC to offer programmes through distance mode, may be allowed to offer Certificate and Diploma programmes of the duration of one year or less in non-technical, non-medical, non-para medical fields and excluding the programmes which require hands on training.”

He is trying to establish that UGC has the jurisdiction to regulate certificate courses and diploma courses, which we have never disputed in any case. We have only stated that UGC has not

exercised the power to regulate online courses until 2018 and that they could only do so through a valid instrument which was not even in existence before 2018. He has found an instrument where the UGC regulated certificate and diploma programs offered by IGNOU and State Open Universities, but this does not establish that the UGC regulated or prohibited online certificate and diploma programs offered by other Universities during that period.

It must be noted that the letter is addressed to IGNOU, New Delhi and State Open Universities and that the National University of Juridical Sciences is a statutory university under the West Bengal National University of Juridical Sciences Act, 1999, and not a state 'open' university.

Therefore, the letter is not applicable to NUJS' courses. The letter further specifies the list of universities to whom it is issued and applicable, and it does not mention the name of NUJS, further confirming this proposition. In fact, Netaji Subhas Chandra Bose Open University is the only university in West Bengal to which it applies.

Further, the notice also states that:

“Therefore, from the academic session 2017-18, IGNOU and SOUs may offer programmes without seeking the approval from UGC but after the approval of its statutory bodies, like Board of Studies, Academic Council, etc. It is desired that UGC may be informed of launch of such Certificate and Diploma Courses.”

Now, UGC's standing permission to IGNOU and State Open Universities to offer courses without its recognition, does not in any way indicate that other Universities are prohibited to do so. Arjun seems to hint that there is some *general prohibition* applicable to every university from conducting online courses without UGC recognition, but he has failed to furnish any such instrument. Thus, his argument is merely centred on the basis of conjecture.

If his argument that there are UGC circulars that prevented NUJS from launching online courses was to hold any water, there should have been a circular issued to NUJS or the general category of universities that NUJS belongs to, prohibiting launching of online courses. Arjun has notably failed to produce any such circular. This is only because no such circular ever existed.

In our original article, we repeatedly demanded that those who call the course illegal must produce even a single piece of law, provision, circular etc that say such courses are illegal. In response, what Arjun produces are notices from UGC that are clearly not applicable. He seems to not appreciate the basic tenet of law that for something to be illegal, there has to be a specific legal prohibition. In his response, he has tried to piece together an argument that in the absence of such specific prohibition, the courses could still be called illegal! Unfortunately, that is now how law works. The onus of producing a piece of law that positively showed these courses were

illegal was on Arjun, since he claims they are illegal, and he failed to produce any law with respect to the same that are actually applicable.

I am sure a lot of lawyers will be reading it. I leave it upon them to arrive at the lack of basic legal logic in Arjun's argument. It is shocking that with such arguments (or rather lack of them) he was able to stir up a furore within the university, and that nobody looked into the actual content of his arguments.

#2 - UGC's publication of list of recognized universities

Arjun shared the lists of recognized institutions published by UGC every year. However, until its new Regulations were passed in 2017, UGC had only *renewed* the recognition of earlier institutions which were already recognized under the 2009 Handbook which was transferred to UGC from IGNOU in 2013. UGC had started releasing a window for application for recognition, which was available to only institutions which were already recognized by IGNOU. As a matter of admitted position of UGC from its RTI response itself which has been shared in our earlier email, no new institution which had not already been recognized under the 2009 Handbook was recognized between 2013 to 2017.

In fact, the subject line of the letter dated 29th May, 2015 (see [here](#)), referred to by Arjun Agarwal, states, "Continuation of Recognition for Offering Programmes through Open and Distance Learning (ODL) for the academic year 2015-16." Further, the first line of the letter states that, "The University Grants Commission had accorded recognition to your University/ Institution for offering programmes through distance mode up to the current academic session i.e. 2014-15," clearly establishing that the letter pertains to renewals or continuation of recognition and no fresh recognitions. Arjun seem to have unwittingly misrepresented the document as an evidence of fresh recognitions. This is consistent with the lack of substance in the rest of his arguments and complete lack of understanding of implication of UGC notifications.

Further, the letter dated 16.02.2016 (available [here](#)) also provides the list of universities and specifies the link of a relevant 'Recognition Letter' that was issued granting the recognition. Each such letter refers to a prior recognition that was already granted. It also appears that such renewals were granted on an *affidavit* basis to the earlier universities which were already recognized once.

We are not concerned about the lists issued in 2018 and 2019, because the UGC had issued new regulations in 2017.

You would also notice that the lists dated 03.10.2018, 21.02.2019 do not disclose recognition of certificate or diploma programs, but only specify bachelor's and master's degree programs. This is because UGC did not concern itself with recognizing courses that were of 1 year or less duration.

#3 - Supreme Court's Judgment in the case of Annamalai University

Arjun has also quoted the Supreme Court's judgment from the case of Annamalai University (see [here](#)):

56. Grant of relaxation cannot be presumed by necessary implication only because UGC did not perform its duties. Regulation 2 of the 1985 Regulations being imperative in character, non-compliance therewith would entail its consequences. The power of relaxation conferred on UGC being in regard to the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the Regulations on the merit of each case do not lead to a conclusion that such relaxation can be granted automatically.... If mandatory provisions of the statute have not been complied with, the law will take its own course. The consequences will ensue.

57. Relaxation, in our opinion, furthermore cannot be granted in regard to the basic things necessary for conferment of a degree. When a mandatory provision of a statute has not been complied with by an administrative authority, it would be void. Such a void order cannot be validated by inaction."

The excerpted part refers to relaxation from a particular requirement that is already applicable. Where no mandatory requirement of UGC recognition for the purpose of offering an online course by a statutory university such as NUJS has been identified to be applicable, the question of relaxation does not arise.

Also, the *Annamalai* case refers to the application of the UGC (Minimum Standards of Instructions for the Grant of the First Degree through Non-Formal/Distance Education in the Faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985 which are not being considered here. In that case, the validity of a B.A.

degree was in question for the purpose of appointment to the post of principal, but its legal validity *per se* was not in question. The judgment never held that the course itself was illegal or that the degree was not valid. The question was restricted to whether the degree is enough to get the job of a principal. This case only fortifies the argument that while NUJS' online courses were legal, only consequence of non-recognition of the course by UGC was that the qualifications were not valid for government jobs. Also, the situation of NUJS' online courses pertains to an entirely different set of statutory instruments.

#4 - Arjun Agarwal's specific questions to iPleaders

Arjun's Question: Why is iPleaders so concerned by the suggestion that NUJS should hold the guilty insiders viz. former Vice Chancellor, Prof. P. Ishwara Bhat; SDME Director, Prof. Anirban Mazumdar; former Registrars (Acting) Dr. R. Parameshwaran and Dr. Sarfaraz Ahmed Khan; Assistant Professor, Ms. Vaneeta Patnaik; and Prof. Sandeepa Bhat (after due investigations) financially liable for the refunds and litigation costs that NUJS has already and will likely suffer on account of their misconduct? Surely such individuals can defend themselves. Have these individuals already sought assistance from iPleaders or is the latter obligated, morally or otherwise, to volunteer assistance?

iPleaders Answer: We do not know why this question has been inserted here. Our response does not traverse these aspects at all. This has no relevance and we have no concern if any so called guilty person is held to account. We never expressed any concern to start with, and Arjun is only trying to impute an intention to us to cover up the lack of substance in his legal arguments.

Arjun's Question: Since iPleaders feels wronged, why did they not approach the EC earlier, especially when NUJS' administration was being unresponsive (as against SDME which iPleaders wrongly believes to be responsive)? It has been nearly a year since the courses were "suddenly" stopped. That said, I am happy that iPleaders is now appealing to the EC. Hopefully, this will put some pace and rigour into the painfully slow-paced EC instituted inquiries.

iPleaders Answer: iPleaders has written on numerous occasions to the Vice-Chancellor and the Registrar for a discussion regarding the sudden discontinuation of the online courses and for identification of methods to handle the repercussions of the same, but has not received any response to the same. iPleaders has initiated arbitration under the MOUs subsequently.

Arjun's Question: iPleaders has stated that it let the students know that their courses are not recognised by the UGC DEB, but their students took the courses anyway. How does that affect the fact that NUJS violated the mandatory regulations notified by the erstwhile IGNOU DEC and later UGC DEB for distance education courses? These regulations clearly stated that requisite approvals will need to be secured mandatorily, while UGC notices blanketly prohibited online

and hybrid courses till 04.07.2018. Students and iPleaders were, legally speaking, in no position to waive the mandatory requirements of law applicable to NUJS for obtaining such requisite approvals and to the concerned students for receiving such certification. In any case, did iPleaders always issue such disclaimers when they first started under Prof. M.P. Singh's tenure? Having seen previous application forms as a part of iPleaders' students' pleadings in W.P. No. 25595 (W) of 2018, I contest this entirely untrue claim. Did the disclaimer also explain the consequences of signing up for a course that is not recognised by the IGNOU DEC/ the UGC DEB?

iPleaders Answer: There was no misrepresentation made to students. Those who asked about the legal validity of certificate courses and diploma courses were informed of NUJS' power to commence diploma and certificate courses in its capacity as a statutory university, which as mentioned under the West Bengal National University of Juridical Sciences Act, 1999. Also appropriate disclaimers were part of the course website itself and not even any student has denied this in the court. Also, once more, to let it sink in, where are the UGC regulations that issue blanket prohibition etc that actually applied to NUJS?

Arjun's Question: What about the fact that iPleaders consulted tax experts who stated that courses that did not have the requisite IGNOU DEC/ UGC DEB approval(s) are liable to attract Service Tax and now the Goods and Services Tax? What's the current status of that wrinkle?

iPleaders Answer: We do not know the relevance of the question here, as the discussion refers to the legal validity of the courses and not taxability of course fees received. In any case, we consulted a law firm on whether iPleaders would be liable to pay GST, and whether NUJS would have to collect the same from students. After receiving advice that GST is applicable to NUJS courses, iPleaders forwarded the same to NUJS. This was out of concern that NUJS would be caught on the wrong foot if they have to fork out a massive amount of fine to GST authorities. What NUJS has done after receiving this input is best known to the University. iPleaders, however, paid GST that was applicable to its services.